*** THE HON'BLE SRI JUSTICE A. GOPAL REDDY**
AND
***THE HON'BLE SRI JUSTICE G. BHAVANI PRASAD**

+ WRIT PETITION NO.25062 OF 2007

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% THURSDAY TWENTY SEVENTH DAY OF DECEMBER, TWO THOUSAND SEVEN

Yenuga Pavan Kumar .. Petitioner

Vs.

$ Anil Kumar Agarwal ..Respondent

! Counsel for the Petitioner: : M.R.K. Chakravarthy.

^ Counsel for the respondent 1 & 2 : Sri J.V. Prasad.

Counsel for the respondent 3 to 6 : Advocate General

< Gist:

>Head Note

? Cases referred

1. (2006) 6 SCC 207
2. AIR 2000 SC 2966
3. (2006) 6 SCC 207
4. 2007 AIRSCW 3023
5. 1964 SC 1625
6. 1975 CRL.L.J 1531

Counsel for the Petitioner: : M.R.K. Chakravarthy.

^ Counsel for the respondent 1 & 2 : Sri J.V. Prasad.

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11. 1964 SC 1625
12. 1975 CRL.L.J 1531

ORAL ORDER: **(per A. Gopal Reddy, J)**

The petitioner Yenuga Pavan Kumar, resident of Vijayawada has filed this writ of habeas corpus for issuance of a direction to the respondents 1 and 2 to produce his wife – Smt. Y. Ashima Agarwal and to set her at liberty to join the society of the petitioner.

Petitioner has filed the petition alleging that the petitioner and the alleged detenu, daughter of respondents 1 and 2 - Ashima Agarwal, resident of Delhi, fell in love while they were studying in USA in 2001, that he got married the alleged detenu on 14.8.2006 as per Hindu rites and customs at Aryasamaj Mandir, Safdarjung Enclave, B-2, New Delhi as per registration bearing No.8889/1977 and they were also issued a certificate to the said effect by Aryasamaj Mandir confirming the marriage of the petitioner with Ashima Agarwal. After the marriage, the

petitioner stayed at New Delhi during August, 2006 to October, 2006 and again from January, 2007 to April, 2007 and during the said period they decided to get the marriage registered under the Hindu Marriage Act and accordingly applied for registration of the marriage on 19.2.2007 before the Marriage Registrar, South-West, New Delhi, who directed them to be present on 23.2.2007 for the purpose of registration accompanied by the Gazetted Officer who attested their application and related documents. Since the concerned Gazetted Officer was not available on 23.2.2007, they again applied for registration of their marriage on 6.4.2007. On coming to know of the marriage, on receipt of notice-dated 11.4.2007 from the Office of the Marriage Registrar, South-West, New Delhi, the 1st respondent took his daughter to the office of the Marriage Registrar on 20.4.2007 and made her to state that she has not signed the application for registration of the marriage. Efforts were also made through Sri G. Rama Kotaiah, a Gazetted Officer working for Government of Andhra Pradesh at New Delhi and who attested the application form and the relevant documents, to give a statement before the Registrar to the effect that he has attested the application submitted for registration of marriage on the request of the Chief Security officer of Sri N. Janardhan Reddy, which may not be taken into consideration. The petitioner is in serious life threat as the police are threatening to kill him at the instance of respondents 1 and 2 and respondent No.4 called him number of times to the Police Station and threatened him with dire consequences.

First respondent came to Hyderabad on 17.5.2007 and met the father of the petitioner in Grand Kakatiya Lobby at Greenlands, Begumpet, Hyderabad and threatened him with dire consequences if the petitioner did not leave the company of his daughter and asked his father to persuade the petitioner to cancel the marriage. It is further alleged that on 1.6.2007 the alleged detenu ran away from her parents house and joined the petitioner society and on coming to know the same the 1st respondent with the help of his lawyer and respondent No.4 met the couple in Taj Hotel, Mansingh Road, New Delhi and took her back promising that a formal grand reception will be arranged, but the 1st respondent failed to honour the promise. Since then the alleged detenu is not in touch with him and all his efforts to contact her failed. The wife of the petitioner is under illegal custody of respondents 1 and 2 who illegally detained and confined her in the house. Respondents 1 and 2 are pressurizing respondents 4 and 5 to kill the petitioner in an encounter. Therefore, the petitioner sought for a direction to the respondents 1 and 2 for

production of the alleged detenu.

Respondents 1 and 2 filed a counter-affidavit denying the allegation of illegal confinement of the alleged detenu stating that their daughter Ashima Agarwal is living in Delhi at her parental house i.e. A.1, Anand Niketan, New Delhi and has never lived outside her parental house even for a day while she was in Delhi. She is employed and as per her business requirements or otherwise travels within and outside the country. She went to USA and she stayed there during the period from 23.8.2007 to 7.9.2007 and then to UAE and stayed there during the period from 14.11.2007 to 19.11.2007 apart from to other places in the country from time to time. To the counter-affidavit, a copy of travel ticket to Mumbai during the period 16.6.07 to 19.6.907 and a copy of her passport showing her departures and arrivals in USA, Dubai and India on the relevant dates were also filed to substantiate that she was never in illegal detention of the respondents 1 and 2. No marriage has taken place between the petitioner and the alleged detenu on 14.8.2006 as claimed and that the application for registration of the marriage has been rejected by the Registrar of Marriages, New Delhi on the statement made by the alleged detenu and that the frauds committed by the petitioner for registration of the marriage are deeply deliberated and designed. The certificate of marriage dated 14.8.2006 is a false document and petitioner sought for registration on the basis of false and forged documents. The Additional District Magistrate/Marriage Officer (SW), New Delhi by order dated 25.7.2007 disbelieved the documents filed by the petitioner and rejected the application for registration of marriage.

The 5th respondent filed a counter stating that the petitioner is a resident of D.No.31-14-16, Danayya Street, Machavaram, Vijayawada which comes within the limits of VII Town Police Station, Vijayawada and denied the allegations made by the petitioner and further stated that nowhere the petitioner has mentioned about the alleged threats of 5th respondent threatening to kill the petitioner under the influence of respondent No.1 and there was no occasion for the 5th respondent to interfere with the life and personal liberty of the petitioner as no complaint has been lodged against him.

The petitioner also filed a reply affidavit wherein the only averment made is that Smt. Ashima Agarwal came to Hyderabad in the month of August, 2003 and lived with the petitioner at Hyderabad and she had always shown her desire to live with him. Further, part of cause of action arose at Hyderabad on 17.5.2007 when

the 1st respondent came to Hyderabad and threatened the petitioner with dire consequences and on several dates when the 5th respondent called the petitioner and threatened him.

The learned counsel for the petitioner vehemently contended that since the alleged detenu was with the petitioner for some time at Hyderabad during the month of August, 2003 and since there were threats administered to the petitioner through the 5th respondent at the instance of respondent No.1, who visited Hyderabad on 17th May, 2007, part of cause of action had arisen in the State of Andhra Pradesh and, as such, this Court has jurisdiction to entertain the writ petition. In support of his contention, the learned counsel relied upon the decisions of the Supreme Court in **OM PRAKASH SRIVASTVA v. UNION OF INDIA AND ANOTEHR**[1] and **NAVINCHANDRA N. MAJITHIA v. STATE OF MAHARASHTRA**[2].

On the other hand, the learned counsel appearing for the respondents 1 and 2 submitted that no part of cause of action had arisen in the State of Andhra Pradesh and, as such, this Court has no territorial jurisdiction to entertain the petition. He further submitted that no marriage had taken place between the petitioner and the alleged detenu and the petitioner tried to obtain registration of marriage on the basis of false and forged documents and the Additional District Magistrate/Marriage Officer, South-West, New Delhi by order dated 25.7.2007 rightly declined to grant registration of marriage on the basis of the documents produced by the petitioner and, therefore, prayed to dismiss the writ petition.

The only question that arises for consideration in this writ petition is, whether this Court has jurisdiction to entertain the writ petition on the facts on which the writ petition was founded?

There is no dispute that under Article 226 of the Constitution of India, High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. Therefore, if the petitioner has been able to establish that even a part of cause of action had arisen within the territories in relation to which this Court exercises jurisdiction, the petitioner can maintain the present writ petition.

As per the averments of the petitioner himself, the following facts are not disputed. He is a resident of Vijayawada town and his marriage with the alleged detenu Ashima Agarwal, daughter of respondents 1 and 2, is alleged to have taken place on 14.8.2006 at Aryasamaj Mandir, New Delhi. According to him, the alleged detenu came to Hyderabad only in the month of August, 2003 i.e. prior to the marriage said to have been taken place at New Delhi and the alleged detenu proposed the marriage in June, 2006 at New Delhi. Petitioner and the alleged detenu applied for the registration of their marriage on 19.2.2007 before the Marriages Registrar, South-West, New Delhi. Alleged detenu ran away from her parents house and joined the petitioner company on 1.6.2007 at New Delhi and the 1st respondent with the help of Respondent No.4 ie Sub-Inspector of Police, Tilak Marg P.S, New Delhi met the couple in Taj Hotel, Mansingh Road, New Delhi and took the alleged detenu back with a promise that a formal reception will be arranged. According to the petitioner, thereafter the alleged detenu was under the illegal detention of respondents 1 and 2 at their house at Delhi.

At this stage, we may also refer to the order dated 25.7.2007 passed by the Additional District Magistrate/Marriage Officer, South-West, Kapasheera, New Delhi, a copy of which has been filed along with the Writ Petition, rejecting the application for registration of marriage of the petitioner with the alleged detenu. The order discloses that Ms. Ashimia Agarwal visited the Office of the Marriage Officer on 20.4.2007 and made a statement that she had signed blank application form for registration of marriage without being aware about the contents of the application, that she had never visited Hyderabad, where the stamps were purchased and affidavits were notarized, that she had signed blank affidavits and she was not aware about the contents of the affidavits and that the petitioner never stayed at A.1, Anand Niketan, New Delhi and requested for rejection of the application for registration of marriage. The report also discloses that the S.H.O, R.K. Puram forwarded a report stating therein that as per the statement of the alleged detenu, her parents and other persons, they are not aware of any marriage between the petitioner and the alleged detenu. The report also confirmed that the petitioner has not stayed at A.1, Anand Niketan, New Delhi which was shown as the address in the application for registration of marriage and that the alleged detenu also gave statement that the petitioner has neither resided in her house nor she married the petitioner and that the petitioner got her signatures on some blank

stamp papers purchased in the State of Andhra Pradesh. The order further discloses that one G. Rama Kotaiah, Assistant Director, A.P. Tourist Information Centra, Ashoka Road, New Delhi who issued a certificate of identification that he has attended the marriage solemnization ceremony on 14.8.2006, appeared before the Marriage Officer and stated that he did not attend the marriage and that he certified on the recommendation of one of his friends who is working as Security officer to Sri N. Janardhan Reddy.

Before we deal with the question on the above facts brought on record, it is apt to notice the observations of the Supreme Court in **NAVINCHANDRA N. MAJITHIA v. STATE OF MAHARASHTRA** at para 37 of the judgment, which are in the following terms:

> **"Therefore, in determining the objection of lack of territorial jurisdiction the Court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it, differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition." (emphasis supplied).**

In view of the above, it is neither expedient nor are we inclined to go into the aspect whether the marriage between the petitioner and the alleged detenu as claimed by the petitioner had taken place on 14.8.2006 at Aryasamaj Mandir Delhi as certified by Aryasamaj Mandir, whether the Marriage Officer, New Delhi has properly evaluated the material placed before him including the statement of the alleged detenu and others in arriving at the decision to reject the application for registration of the marriage of petitioner and the alleged detenu and whether the alleged detenu gave statements before the authorities on her own or she has been pressurized by her parents to give false statements. This Court is only concerned, even if the marriage as claimed by the petitioner with the alleged detenu is true, whether on the factual foundation of the writ petition, this Court has jurisdiction to entertain the petition.

From the facts as narrated by the petitioner himself, as detailed above, it is clear that the petitioner and the alleged detenu never resided together in the State of Andhra Pradesh after the marriage alleged to have taken place on 14.8.2006 at

New Delhi. Therefore, no cause of action had arisen in the State of Andhra Pradesh to enable this Court to entertain the writ petition. The petitioner has not been able to establish that even a part of cause of action had arisen in the State of Andhra Pradesh. The so called visit of the alleged detenu to Hyderabad in the month of August, 2003 is three years earlier to the marriage alleged to have taken place on 14.8.2006. No particulars have been furnished by the petitioner as to whether the alleged detenu has ever lived with him at the address furnished in the writ petition i.e. at Vijayawada or they resided together in any part of the State of Andhra Pradesh after their marriage said to have been taken place on 14.8.2006. Therefore, even if the marriage as claimed is true, on the factual foundation of the writ petition, it would not be possible for this Court to come to the conclusion that a part of cause of action had arisen within the territories to which this Court exercises jurisdiction so that this Court has jurisdiction to entertain the writ petition.

The contention of the petitioner that the 1st respondent had visited Hyderabad on 17.5.2007 and threatened the petitioner with dire consequences and threats were administered through the 5th respondent and, therefore, part of cause of action had arisen within the jurisdiction of this court has also no merit. 5th respondent in his counter affidavit categorically denied the allegations of the petitioner and stated that he never visited the house of the petitioner nor interfered with the personal life and liberty of the petitioner. Further, no material has been placed on record to show that the petitioner has ever made any complaint to the police about the alleged threats of the 1st respondent or the interference of the 5th respondent with his life and personally liberty.

In **OM PRAKASH SRIVASTAVA vs. UNION OFINDIA AND ANOTHER**[3], relied upon by the learned counsel for the petitioner, which relates to conditions of prisoners in the State of U.P, the Supreme Court observed that the Delhi High Court has not dealt with the question as to whether it had jurisdiction to deal with the writ petition and merely observed that it may have jurisdiction, but the issue can be more effectively dealt with by the Allahabad High Court. The Supreme Court observed that it was open to the Delhi High Court to say that no part of the cause of action arose within the territorial jurisdiction of the High Court, but it did not do so. This decision has no application to the facts of the case since we have already held that on the facts set out by the petitioner himself in the petition, the petitioner has failed to establish that even a part of cause of action had arisen within the jurisdiction of

this Court.

However, it may be noted that in the very same judgment, the Supreme Court while considering Clause (2) of article 226 of the Constitution of India, categorically held that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under article 226 of the Constitution. In order to maintain a writ petition a writ petitioner has to establish that a legal right claimed by him has *prima facie* either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof. The petitioner herein has not been able to establish that his legal right has been infringed by the acts committed by the respondents within the territories to which this Court exercises jurisdiction.

I n **NAVINCHANDRA N. MAJITHIA v. STATE OF MAHARASHTRA,** dealing with the quashing of FIR, it was held:

> "The mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another State. Nor are we to be understood that any person can create a fake cause of action or even concoct one by simply jutting into the territorial limits of another State or by making a sojourn or even a permanent residence therein. The place of residence of the person moving a High Court is not the criterion to determine the contours of the case of action in the particular writ petition. The High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction. It depends upon the facts in each case."

On the facts pleaded in the present writ petition, we have come to the conclusion that this Court has no territorial jurisdiction to entertain the writ petition as no part of the cause of action had arisen within the territorial limits of this Court.

The Supreme Court in **ALCHEMIST LIMITED & ANOTHER vs. STATE BANK OF SIKKIM & OTHERS**[4] after scanning the case law on the point of 'territorial jurisdiction' held thus:

> From the aforesaid discussion and keeping in view the ratio laid down in catena of decision by this Court, it is clear that for the purpose of deciding whether facts averred by the petitioner-appellant, would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral

part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a 'part of cause of action', nothing less than that.

However, S.B. Sinha, J speaking for a Three-Judge Bench of the Supreme Court in **KUSUM INGOTS & ALLOYS LTD. v UNION OF INDIA AND ANOTEHR**[5] Bench held:

> "We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. (See **Bhagat singhBugga v. Dewan Jagbir Sawhney (AIR 1941 Cal 670), Madanlal Jalan v. Madanlal (IR 1949 Cal 495), Bharat Coking Coal Ltd., V. Jharia Talkies &Cold Storage (P)Ltd., (1997 CWN 122), S.AS. Jain & Co. V. Union of India ((1994) CHN 445) and New Horizons Ltd. V. Union of India (AIR 1994 Del. 126)."**

Further, even if the marriage as claimed by the petitioner is true and part of jurisdiction had arisen within the territories to which this Court exercises jurisdiction, he has an alternative remedy of approaching the other forums ie. Criminal Court under Section 97 of the Code of Criminal Procedure or has even a right to approach the Civil Court in exercise of his matrimonial rights, which he may have against the alleged detenu, for restitution of conjugal rights. In this regard, we may refer to the observations of the Supreme Court in **MOHD. IKRAM HUSSAIN v. STATGE OF U.P.**[6] Justice Hidayatullah, speaking for the Bench observed thus:

> Exigence of the writ at the instance of a husband is very rare in English Law, and in India the writ of habeas corpus is probably never used by a husband to regain his wife and the alternative remedy under section 100 of the Code of Criminal Procedure is always used. Then there is the remedy of civil suit for restitution of conjugal rights. Husbands take recourse to the latter when the detention does not account to an offence and to the former if it does. In both these remedies all the issues of fact can be tried and the writ of habeas corpus is probably not demanded in similar cases if issues of fact have first to be established. This is because the writ of habeas corpus is festinum remedium and the power can only be exercised in a clear case.

Following the above decision of the Supreme Court, a Division Bench of the Kerala High Court in **T. RAMACHANDRAN v. V.K. KUTTAN AND OTEHRS**[7], while dealing with the jurisdiction of a High Court exercising the power of *habeas corpus* in a matter where the custody of a wife is sought by the husband, held that till the factum of wrongful confinement and illegal custody are established in methods known to law, the Court cannot assume and hold the respondents responsible for acts, which in law would constitute an offence and the issuance of a writ of *habeas corpus* would necessarily pre-suppose the factum of wrongful confinement. Accordingly, it was held that it would be more appropriate to invoke the provisions of the Code of Criminal Procedure and the jurisdiction of the District Magistrates, Sub-Divisional Magistrate, or Magistrates of the First Class as contemplated by Section 97 of the Code of Criminal Procedure before whose court the question of fact can be resolved after due enquiry. It was also held that it would not be expedient on the part of the Court to embark upon such an enquiry when the petitioner can have such an enquiry before other forums.

In the light of the legal position as referred to above and the facts on which the writ petition has been founded, we are of the view that no part of cause of action had arisen within the territorial jurisdiction of this Court and as such this Court has no jurisdiction to entertain the writ petition. No doubt the order of the District Magistrate/Marriage Officer, New Delhi, dated 25.7.2007 discloses that the factum of the marriage of the petitioner with the alleged detenu has been denied by the alleged detenu who gave a statement before the said authority and the report of the police also did not favour the petitioner, which belies the contention of the petitioner that he married the alleged detenu and she has-been under the illegal detention of her parents. But, this Court cannot go into the truth or otherwise of those facts as they are immaterial for the purpose of this writ petition. Even if the marriage as claimed by the petitioner is true, on the basis of the averments made in the writ petition, it cannot be said that a part of cause action had arisen within the jurisdiction of this court to entertain the present writ petition. The facts as pleaded by him gives an impression that he tried to create a fake cause of action to enable this Court to entertain the writ petition though he is fully aware that this Court has no jurisdiction to entertain it. We, therefore, see no merit in the contentions of the learned counsel for the petitioner and decline to issue a writ of habeas corpus as prayed for.

Accordingly, the writ petition is dismissed as not maintainable with exemplary costs of Rs.2,000/- payable to the A.P. High Court Legal Services Committee within a period of four weeks from today.

A. GOPAL REDDY, J

27th December, 2007 **G. BHAVANI PRASAD, J**

LR copy to be marked: Yes

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[1] (2006) 6 SCC 207
[2] AIR 2000 SC 2966
[3] (2006) 6 SCC 207
[4] 2007 AIR SCW 3023
[5] (2004) 6 SCC 254
[6] 1964 SC 1625
[7] 1975 CRL.L.J 1531